

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>WILLIE J. LUCKEY, JR.,</b>	:	<b>CIVIL ACTION NO. 1:07-CV-1759</b>
	:	
<b>Plaintiff</b>	:	<b>(Judge Conner)</b>
	:	
<b>v.</b>	:	
	:	
<b>MICHAEL J. ASTRUE,</b>	:	
	:	
<b>Defendant</b>	:	

**ORDER**

AND NOW, this 14th day of February, 2008 upon consideration of the report of the magistrate judge (Doc. 8), recommending that plaintiff's social security appeal be remanded to the Commissioner of Social Security, to which objections were filed (Docs. 9, 10), and, following an independent review of the record, it appearing that the administrative law judge ("ALJ") based her opinion of plaintiff's level of pain upon her observations at the hearing, see Aquino v. Harris, 516 F. Supp. 265, 272 (E.D. Pa. 1981) (stating that the ALJ cannot "substitute [her] personal judgment for medical evidence"), and that the ALJ failed to address all aspects of the occupational expert testimony,<sup>1</sup> see Cotter v. Harris, 642 F. 2d 700,

---

<sup>1</sup> The ALJ questioned an impartial occupational expert about three hypothetical individuals who suffered from progressively increasing numbers of plaintiff's alleged illnesses. The occupational expert concluded that the first two hypothetical individuals were capable of working, but that the third hypothetical individual, whose ailments included a need to take daily naps, would be unfit for employment. The ALJ's decision failed to discuss the third hypothetical person or explain why the third hypothetical person is not materially the same person as the plaintiff.

704 (3d Cir. 1981) (providing that the decision must be accompanied by “a clear and satisfactory explication of the basis on which it rests”), it is hereby ORDERED that:

1. The report and recommendation of the magistrate judge (Doc. 8) is ADOPTED.
2. The above-captioned case is REMANDED to the Commissioner of Social Security for further proceedings consistent with this order and the report and recommendation of the magistrate judge (Doc. 8).
3. The Clerk of Court is directed to CLOSE this case.

S/ Christopher C. Conner  
CHRISTOPHER C. CONNER  
United States District Judge